IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5502 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

JAYPALSINH INDRASINH TOMER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5502 of 2002

MR AR SHAIKH for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 22/07/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 1.3.2002 passed against him by the Police

Commissioner, Surat City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). The petitioner has been branded as "bootlegger" within the meaning of Sec.2(b) of the PASA Act.

2. The petitioner has been served with the grounds of detention and the entire bunch of papers supplied to the detenu has been produced before this Court and on perusal of these papers, it transpires that the petitioner was found involved in one offence registered at Pandesara Police Station on 6.1.2002 vide CR No.III.32 of 2002 for the offences punishable under Sections 66(1)(B), 65EA, 81 of the Bombay Prohibition Act. Around 1344 small bottles of liquor worth Rs. 53,760/- was recovered from a truck intercepted by the police on the date of incident i.e. 6.1.2002. The petitioner was arrested from the spot of incident along with other accused persons and the papers of investigation reveal that this stock of prohibited liquor was brought for one Shri Baljeet Pannalal Mourya. This Shri Baljeet Pannalal Mourya was also arrested in connection with aforesaid offence and was detained under PASA by the detaining authority. The order of detention passed against said Shri Baljeet Mourya was challenged by him before this Court by filing substantive petition viz. Spl.C.A. No. 3412/2002 and it is submitted that this Court while dealing with the said petition, vide oral judgment dated 17.6.2002 allowed the same and set Shri Baljeet Mourya at liberty. It is, therefore, submitted by ld. counsel Ms. Banna Datta for Mr. A.R.Shaikh, ld. counsel for the petitioner that since the co-detenu is set at liberty by this Court, the present petitioner should also be set at liberty and his continued detention should be turned down on the ground of parity.

3. It is submitted by ld. counsel appearing for the petitioner that the other important ground for quashing the order of detention is the ground of delay as the order of detention has been passed after one month from the date of registration of the offence. Of course, the statements of unnamed witnesses are recorded on 29.1.2002 from which it can legitimately be argued that till 29.1.2002, there was nothing before the authority concerned on the basis of which the petitioner could have been detained except registration of only one criminal offence.

4. It is settled legal position that on the strength of solitary incident, a person could not have been

detained unless the case falls within a particular category and the facts warrant such exercise. In the instant case, the petitioner is involved in only one criminal offence and, therefore, he could not have been detained under PASA. Further, when co-detenu is released by this Court, this petition also requires to be allowed and petitioner also requires to be set at liberty on the ground of parity. Hence, without going into the merits of other grounds of challenge, this petition requires to be allowed.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 1.3.2002 passed by the Police Commissioner, Surat City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

22-7-2002 [C. K.BUCH, J]
*rawal